Merzon Leather Co., Inc. *and* Local 342-50, Leather Goods Division, United Food & Commercial Workers Union, AFL-CIO. Case 29–CA–24205

October 1, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

Upon a charge filed by the Union on April 23, 2001, the General Counsel of the National Labor Relations Board issued a complaint on June 25, 2001, against Merzon Leather Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.[1]

On August 16, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On August 20, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by facsimile transmission, sent a letter dated August 8, 2001, to the Respondent warning that unless an answer were received by August 13, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation with its principal office and place of business located at 85 North Third Street, Brooklyn, New York, has been in the business of transporting and selling leather goods and products to its commercial customers. During the 12-month period preceding the issuance of the complaint, in the course and conduct of its business operations, the Respondent sold and shipped from its Brooklyn facility, goods, products, and materials valued in excess of $50,000 directly to other enterprises located within the State of New York, including General Electric Co., which meets a direct standard of the Board for the assertion of jurisdiction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production, manufacturing, shipping, receiving and maintenance employees employed by Respondent at its Brooklyn facility, excluding office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

At all material times since 1994, the Union has been the designated exclusive collective bargaining representative of the Unit, and since that time, has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which was effective by its terms for the period September 12, 1997 to April 30, 2000.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the unit.

About January 26, 2001, the Union requested that the Respondent negotiate a collective bargaining agreement to succeed the one referred to above. Since about January 26, 2001, the Respondent has failed and refused to bargain with the Union for a successor collective bargaining agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

[1] Although a copy of the complaint was served on the Respondent by both regular and certified mail on June 26, 2001, the Respondent failed to claim the copy of the complaint sent by certified mail. The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). In addition, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *J&W Drywall Co.*, 308 NLRB 517, 518 (1992); *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees since January 26, 2001, we shall order it to bargain with the Union with respect to wages, hours, and other terms and conditions of employment of the unit's employees, and, if an understanding is reached, embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Merzon Leather Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 342-50, Leather Goods Division, United Food & Commercial Workers Union, AFL–CIO, as the exclusive collective bargaining representative of the employees in the following unit:

> All production, manufacturing, shipping, receiving and maintenance employees employed by Respondent at its Brooklyn facility, excluding office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the unit employees concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 26, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 1, 2001

Wilma B. Liebman,	Member
John C. Truesdale,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 342-50, Leather Goods Division, United Food & Commercial Workers Union, AFL-CIO, as the exclusive collective bargaining representative of the employees in the following unit:

> All production, manufacturing, shipping, receiving and maintenance employees employed by us at our Brooklyn facility, excluding office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL , on request, bargain with the Union as the exclusive representative of our unit employees concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

MERZON LEATHER CO., INC.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."